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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

A-9233 (191930-1560)

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on July 25, 2008

Signature /Karen G. Hazzah/

Typed or printed name Karen G. Hazzah

Application Number

10/602,986

Filed

2003-06-25

First Named Inventor

Wasilewski, et al.

Art Unit

2131

Examiner

Chai, Longbit

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☐ attorney or agent of record.

Registration number

☒ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34

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Telephone number

July 25, 2008

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 forms are submitted.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:
Wasilewski, et al.

Serial No.:
10/602,986

Filed:
June 25, 2003

For:
**Method for Partially Encrypting Program
Data**

Group Art Unit:
2131

Examiner:
Chai, Longbit

Docket No.:
A-9233 (191930-1560)

**REMARKS IN SUPPORT OF
PRE-APPEAL BRIEF CONFERENCE**

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant submits the following remarks in support of a Request for a Pre-Appeal Brief Conference.

REMARKS

Applicant respectfully submits that the Examiner's rejections of the claims in the pending application are clearly in error. In the outstanding final Office Action (mailed April 25, 2008, Paper No. 20080422), the Examiner contends that since packets in a video stream have different service types, and these packets are encrypted, this implies that packets are selected for encryption based on the service type. This is clear error, since under this rationale, all the components could be encrypted instead.

I. Rejection of Claims 1-22 under 35 U.S.C. §103

Claims 1-22 have been rejected under §103(a) as allegedly obvious over U.S. 5,418,782 to *Wasilewski* (hereinafter *Wasilewski* '782) in view of U.S. 5,081,678 to *Kaufman* (hereinafter *Kaufman*). Although Applicant believes independent claims 1 and 13 are patentably distinct, the clear errors in rejecting similar elements for these claims are presented together here to facilitate review. Furthermore, since independent claims 1 and 13 are allowable, claims 2-12 and 14-22 are allowable for at least the reason that each depends from an allowable claim.

A. Independent Claims 1 and 13

1. The Office Action Allegation

The final Office Action (pp. 6-7) contends that the proposed combination of *Wasilewski* '782 and *Kaufman* teaches "selecting for encryption a digital bit stream from a plurality of digital bit streams using an identifier", as recited in claim 1, and "selecting for encryption a program from a transport stream using an identifier" as recited in claim 13. The Office Action explains its reasoning as follows. First, the Office Action asserts that *Wasilewski* '782 teaches:

(a) the packets of a data stream can be partially encrypted based on the service type of the packet such as video, audio or data (V/A/D) service type - i.e., to select for encryption a portion of each of a plurality of digital bit stream from a transport stream (i.e. partially encrypted from a video, audio or data (V/A/D) combined data stream) (*Wasilewski*: Column 4 Line 58 - 67) and (b) the packet ID (PID) is available to identify a packet as one of video, audio or data (V/A/D) service types (*Wasilewski*: Column 14 Line 4 - 7 and Column 13 Line 57 - 59: each type of audio, video and data elementary streams is uniquely assigned a packet ID (PID)).
(Office Action, p. 3, emphasis in original)

Next, the Office Action (p. 3, emphasis in original) admits that “*Wasilewski* ‘782 does not disclose explicitly using the packet ID to select which packets to be encrypted,” but further contends that *Kaufman* teaches:

using a packet ID for encryption can provide the advantage for simplifying the decryption task at the receiver by using packet ID as an indicator of the encryption / decryption key (*Kaufman*: Column 2 Line 12-17 / Line 2-10 / Line 44-56: the key identifier placed inside a transported packet can be considered as one type of packet identifier).
(Office Action, p. 4, emphasis in original).

2. Cited Portion of *Wasilewski* ‘782

The Office Action allegations that are disputed by Applicant rely on a small portion of *Wasilewski* ‘782, reproduced below:

Each basic service comprises a set of related service components, such as video (V), audio (A) and closed-captioning (CC) service components, as shown. In the present embodiment, the service components comprise digital data, however, the present invention is not limited thereto and may also be employed in systems that transmit analog service components or a combination of digital and analog service components. Moreover, one or more service components of a given basic service may be compressed and/or encrypted prior to transmission.
(*Wasilewski* ‘782, Col. 4, lines 58-67.)

3. Cited Portion of *Kaufman*

The Office Action allegations that are disputed by Applicant rely on a small portion of *Kaufman*, reproduced below:

Each data packet contains sufficient information for the receiving node to ascertain which key to use to decrypt and/or check the integrity of a data packet. This information may either be implicit, i.e., based upon the source address information, or explicit, i.e., based upon a key identifier placed in the packet.
(*Kaufman*, Col. 2, lines 2-10.)

Also, the receiving node in performing the look up operation in its key table does this to find the sending node's key so that it can use that key to decrypt or check the integrity of the data...A common method used to facilitate the look up operation is to have the two nodes exchange an index in the data packet. This index serves as an index into the receiving node's look up table. The index enables the receiving node to locate the sending node's key, thus, enabling the receiving node to decrypt and/or check the received data.
(*Kaufman*, Col. 2, lines 44-56.)

4. Refutation of the Office Action Allegation

a. *Wasilewski* '782 does not teach "encryption based on service type"

The final Office Action alleges that the above portion of *Wasilewski* '782 teaches partial encryption "based on service type of the packet". Applicant first notes that this quoted language does not appear in claim 1 or claim 13. However, the Examiner uses this alleged teaching in *Wasilewski* '782 (encryption based on service type), along with *Kaufman*'s alleged teaching of using a packet ID for encryption, to combine into the features recited in claims 1 and 13. Therefore, Applicant will address the Examiner's characterization of *Wasilewski* '782.

Applicant will assume, for the sake of argument, that a "component" in *Wasilewski* '782 corresponds to both "a digital bit stream" as recited in claim 1 and a "program from a transport stream" as recited in claim 13. Even so, *Wasilewski* '782 does not teach any mechanism for a selecting components for encryption, based on anything. The single paragraph in *Wasilewski* '782 relied upon by the Office Action simply states that components can be encrypted. Although *Wasilewski* '782 teaches that components are identified by a PID (program identifier), this does not imply that the PID is used to select particular components for encryption, because all the components could be encrypted instead. Thus, the Examiner's characterization of *Wasilewski* '782 is clear factual error.

b. The combination of *Wasilewski* '782 and *Kaufman* does not teach the claimed features

The final Office Action characterizes *Wasilewski* '782 as teaching "selecting for encryption a digital bit stream or a program based on X" and then uses *Kaufman* to replace X with "identifier" – with the alleged result being Applicant's claimed features. As discussed above, *Wasilewski* '782 is deficient because it does not teach X – it does not teach any criteria used to select packets for encryption. Since the primary reference does not teach that which is relied on, the combination is deficient in teaching the claimed features, and is thus an error in law.

Applicant will assume, for the sake of argument, that a key identifier in *Kaufman* properly corresponds to the "identifier" recited in claims 1 and 13. Even so, Applicant submits that a person of ordinary skill in the art would not be motivated to use the key identifier in *Kaufman* **to select packets for encryption**. The key identifier in *Kaufman* is used to convey encryption information to the receiver without putting the key itself in the packet. Specifically, and as shown above, *Kaufman* teaches that the key identifier is an index into a key table which is commonly shared by transmitter and receiver. *Kaufman* does not deal with the problem of selecting entities for encryption, but instead deals with the problem of how to convey encryption information once packets are selected and encrypted. Therefore, a person of ordinary skill in the art would not

look to *Kaufman*'s teachings about conveying encryption information in order to select streams or programs for encryption. Thus, the Examiner's proposed combination of *Wasilewski* '782 and *Kaufman* is clear legal error.

Accordingly, the proposed combination of *Wasilewski* '782 in view of *Kaufman* does not teach at least the features described above and recited in claims 1 and 13. Therefore, a *prima facie* case establishing an obviousness rejection has not been made, and the rejection should be withdrawn.

CONCLUSION

Applicant respectfully requests that all outstanding objections and rejections be withdrawn and that this application and presently pending claims 1-22 be allowed to issue.

Respectfully submitted,

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